APPENDIX A

Opinion, Superior Court for County of San Diego, California

1167 The Court: People vs. Donald E. Sullins. The record may show the defendant is present with his counsel and the Deputy District Attorney is in attendance. The matter comes on this morning for decision.

The Court wishes to begin his comments on this most interesting case by acknowledging his appreciation to counsel for the manner in which the case was tried. Each counsel did an outstanding job, not only of preparation but also of presentation. You were not only considerate of the Court but also of each other. Examination and cross-examination were both conducted in a complete but concise manner. In short, your performance in this trial was a demonstration of real advocacy.

The defendant is charged, pursuant to an indictment filed against him in this court with the offense of involuntary manslaughter in violation of Section 192.2 of the Penal Code. The victim of the homicide was Rhea Sullins, the minor daughter of the defendant. The type of manslaughter involved in this case is defined by the Code as the unlawful killing of a human being without malice either, first, in the commission of an unlawful act not amounting to a felony, or, secondly, in the commission of a lawful act which might produce death, in an unlawful manner or without due caution and circumspection.

1168 Much was said during the trial concerning the natural and legal rights of parents with respect to the responsibilities and duties involved in the control of their children. Let me point out that it is well settled in this state that the rights of parents as the natural guardians of their children are not absolute but are subject to the supervisory control of the State and may be controlled by both statutory and judicial action. While the State's right to intervene and protect the child against the abuse of parental authority does not give it power to interfere with the natural liberty of parents to direct the upbringing of

their children, it does, however, set up the rule of reason, which circumscribes the uncontrolled right of a parent to set up his or her own standard of conduct and thereby subjects his or her actions to reasonable regulation by the State. The authority for this proposition is set forth in 37 Cal. Jurisprudence 2d and in the case of Anthony vs. Tarpley at 45 Cal. App. 2d, 72.

It must be generally conceded that there is a legal as well as a moral obligation on the part of parents to furnish their minor children with the necessities of life. These obligations have been held to include the furnishing of food, clothing and shelter, and such medical attention or attentions in the case of illness as are absolutly requisite to relieve physical suffering and pain and to overcome or conquer disease, if by such attention it can be done.
1169 This comes to us by case law through Evans vs. Noonan, reported at 20 Cal. App., 288, cited with approval in Los Angeles Finance Company vs. Flores, 110 Cal. App. 2d Supplement, 850.

The restriction of parents' authority with respect to an infant has likewise been held to be a valid exercise of the police power of this State. Examples of the statutory manifestations of this authority are found in Sections 272 and 273a of the Penal Code. Section 600 of the Welfare & Institutions Code furnishes us with still another example of the statutory enactment of this power of the State.

It is well settled law in this State that something more than ordinary negligence is needed to constitute lack of "due caution and circumspection" as used in Penal Code Section 192, Subdivision 2, declaring that one is guilty of manslaughter if a human being is killed in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection, and to impose criminal liability for a homicide, negligence must be aggravated, culpable, gross or reckless; that is, the accused's conduct must be a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with

proper regard for human life, or in other words, disregard or indifference to the consequences. Therefore, an act is criminally negligent when a man of ordinary prudence could foresee that the act would cause a high degree of
1170 risk of death or great bodily harm.

It is likewise well settled law in this state that the acts made punishable as misdemeanors by Penal Code 273a, which acts now are felonies, relating to cruelty towards children and endangering bodily health or the life of a child amount to unlawful acts within the meaning of Penal Code Section 192 defining involuntary manslaughter as homicide in the commission of an unlawful act. The authority for this proposition is found in People vs. Villalobos, 208 Cal. App. 2d, 321.

No detailed recitation of the evidence is intended by me, and I wish it to be clearly understood that I am not herein attempting to cover any phase of the evidence with particularity. I am simply attempting to cite certain significant portions of the evidence, as I interpreted it, so that my findings may be more easily understood.

The People contend that the defendant is guilty of a violation of Section 192.2 of the Penal Code upon any one or all of the three following theories: First, that the defendant is guilty of a violation of Section 272 of the Penal Code because his daughter's death arose or was contributed to by a violation of that section. Secondly, that the defendant is guilty of a violation of Section 273a of the Penal Code, then a misdemeanor, now a felony, and that his daughter's death arose or was contributed to by a violation of that section. Third, that Rhea's death
1171 arose in the commission of a lawful act accomplished without due caution and circumspection.

The defendant, on the other hand, contends that he violated no statute or legal obligation, since he has a right to believe as he chooses; that he has a freedom of choice of medical assistance; that the evidence as to the cause of death was inconclusive; that the defendant had a right to rely and did rely upon the advice of one Dr. Shelton; that

since the defendant loved his daughter, his actions cannot be construed as showing any intent to fail to furnish any necessary of life to her; that his actions cannot be construed as being negligent. Next and finally, that the prosecution's evidence is in all respects insufficient to sustain, or permit a conviction.

I now find that the evidence here shows:

First, that Rhea Sullins, age seven, the defendant's daughter, died on March 9, 1963, from bronchial pneumonia, contributed to by malnutrition and inanition. In this connection, permit me to state that while the medical evidence was in some particulars conflicting, I had no problem in concluding, as I have stated, that this child's death was contributed to by malnutrition and inanition.

Secondly, that the medical evidence establishes that Rhea Sullins was in an advanced state of emaciation on autopsy; that there was little or no subcutaneous fat present; that as the lay witnesses for the prosecution aptly
1172 put it, she was "skin and bones"; that Rhea lost approximately one-third of her body weight, that is, she decreased in weight from 51 pounds to 34.12 pounds during her illness of forty-four days; that during these forty-four days she was fasted by her father for either seventeen and a half or eighteen and a half days, during which time she received no food whatever, and for another seventeen and a half days she received juices only, the exact amount of which is not disclosed by the evidence. That during the acute stages of her illness no medical doctor, physician or surgeon, or other licensed health practitioner, saw the child; that the only medical licensee who saw her from the time she was sent home from school in January to the time of her death was the examination of February 2, 1963, by Dr. Jensen, a licensed chiropractor, who found Rhea to be in a serious condition and so advised the defendant. It likewise appears from the evidence that one Dr. Shelton of San Antonio, Texas, or a nearby suburb, was contacted by the defendant from time to time by telephone; that this Dr. Shelton is allegedly an authority

on therapeutic fasting; that the defendant considers him to be his medical consultant; that according to defendant, Shelton advised a fast after the child became critically ill on February 11th with a temperature of 105.25, when she was gasping for breath and could not lie down; that this fast continued for fourteen and a half days; that the child's fast was finally broken because of too much
1173 weight loss; that the defendant allegedly asked Dr. Shelton over the phone if he could bring the child to him in San Antonio, but Shelton refused because the child was too weak. That on or about February 26th defendant concluded there was nothing more that could be done, so he did not take the child to see any practitioner, nor did he call any practitioner to his home, nor did he take any other action to obtain advice or treatment for Rhea, other than to call Shelton a few more times. That the photographs admitted in evidence showing the child at death reveal a very emaciated corpse, even after the injection of 200 cc's of tissue filler in her face by the mortician.

Other significant findings which I adduced from the evidence indicate that the defendant placed Rhea on a fast for three days at the outset of her illness and that she objected to this. The defendant himself admits that fasting in itself can be potentially dangerous to life.

That the defendant informed a witness that on or about the night of February 11th Rhea was suffering from a temperature of 105.25 degrees, and that she could not breathe or lie down; that the defendant told the witness of fevers which went up as high as 104, 105 and 107 degrees; that the defendant was urged by fellow workers to take her to some doctor; that the witnesses who observed the child during her illness concluded that she was nothing but skin and bones; that Mrs. Peet, who took her tem-
1174 perature at various times at defendant's request, found it to range between 101 and 105.

Dr. Jensen, who examined Rhea on February 2nd, advised the defendant at that time that she was in a serious

condition; that he heard chest rales and that her heart was fast; that she had a temperature of 103 and complained of pains in her wrist. At that time Dr. Jensen prescribed a building program, not a fast. He testified further that Sullins called him within the following week to state that he was discontinuing his treatment, was not following his program and was going to fast her.

A Mrs. Rich testified that almost daily the defendant talked of Rhea's illness at work; that the defendant reported fevers of 103, 104 and 105 to her. He also advised her that he was used to tragedy and that this was the only way. The defendant himself admitted that he was aware of the seriousness of the case as the disease progressed. The defendant testified that after his conversation with Shelton on February 26th concerning Rhea's condition that he took her to no one else, because there was nothing else to do. In his statements to Officer Bender defendant made significant admissions, among which was the amazing admission that on March 8th Rhea had a slight delirium.

That People's Exhibit No. 13, the defendant's letter to his mother-in-law dated March 7, 1963, is a declaration by him demonstrating that he made the decisions as to what course or courses would be followed in treating Rhea during her illness. As he puts it, "Anyway, I've had my way during the illness by using dynamite."

These remarks could be extended indefinitely and other specific findings of fact could be made, since the evidence introduced by both the People and the defendant was quite detailed. This is particularly true of the medical evidence in the case, however, as I have heretofore indicated, I have found that Rhea's death, medically speaking, resulted from bronchial pneumonia contributed to by malnutrition and inanition.

I have reviewed all of the evidence; I have studied the authorities cited by counsel, and I find that I am satisfied beyond a reasonable doubt that the defendant's unlawful conduct was criminal and resulted in the death of his own daughter. I therefore find him guilty as charged.

APPENDIX B

(Filed October 5, 1965)

IN THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT
STATE OF CALIFORNIA

4th Crim. No. 1684

THE PEOPLE, *Plaintiff and Respondent,*

v.

DONALD E. SULLINS, *Defendant and Appellant.*

Opinion

APPEAL from a judgment of the Superior Court of San Diego County. William P. Mahedy, Judge. Affirmed.

Luke McKissack and Burton Marks, for Defendant and Appellant.

Thomas C. Lynch, Attorney General, William E. James, Asst. Attorney General and William L. Zessar, Deputy Attorney General, for Plaintiff and Respondent.

The defendant starved his daughter until she died; was charged with involuntary manslaughter, i.e., a violation of Penal Code § 192, subdivison 2; was found guilty after trial by the court without a jury; was granted probation; and appealed.

Contentions on appeal are: (1) The insufficiency of the evidence to establish, (a) the corpus delicti of the offense without reliance upon extrajudicial statements by the defendant, (b) the element of criminal intent or criminal negligence, or (c) the existence of the element of willfulness insofar as violations of Penal Code sections 270 or 273a are involved; and, (2) alleged error in the admission of incriminating statements by the defendant contrary to the exclusionary rule announced in *People* v. *Dorado,* 62 Cal. 2d 338.

The elements of the corpus delicti of the offense with which defendant was charged are the death of the alleged victim and the existence of some criminal agency as its cause. (*People* v. *Amaya,* 40 Cal. 2d 70, 75; *People* v. *Villalobos,* 208 Cal. App. 2d 321, 325; *People* v. *Rodriguez,* 186 Cal. App. 2d 433, 436.) There is ample evidence, independent of any statements by the defendant, supporting the conclusion that his daughter, Rhea, age 7 years, died on March 9, 1963; that the immediate cause of death was pneumonia; that the major contributing cause of death was starvation; and that the starvation resulted from a fast imposed upon the victim by defendant. This evidence was sufficient prima facie proof of the corpus delicti.

The defendant's argument in support of his contention that the evidence is insufficient to sustain the finding of criminal intent or criminal negligence is directed to its weight rather than its sufficiency as a matter of law, contrary to the fundamental rule on appeal. (*People* v. *Daugherty,* 40 Cal. 2d 876, 885.) There is evidence supplied by the testimony of doctors, neighbors of the defendant, and his co-workers which, supported by inferences reasonably deducible therefrom sustains the conclusion that the defendant willfully subjected his daughter to a fast, when she was seriously ill, to prove his belief that fasting was a cure for illness even though he knew that in doing so her illness might result in death and that the fast so imposed was a major contributing cause of the pneumonia which was the immediate cause of death.

Rhea became ill on January 25, 1963. During the first part of her illness the defendant contacted a medical doctor concerning such by telephone, but refused to follow this doctor's advice because it did not conform to his belief that the administration of drugs was not a proper method to cure an illness. At this time he subjected his daughter to a fast, depriving her of all food and permitting consumption of only water. Thereafter he consulted a

chiropractor, because the latter was a drugless practitioner, who advised him against the fast and, on two occasions, impressed upon him the seriousness of the illness from which his daughter was suffering, stating that she had a deep-seated infection. Although the defendant claims that following this advice he placed his daughter on a conventional diet, during which time her condition became worse, the evidence supports the inference that he maintained the strict fast imposed upon his daughter at all times from the beginning of her illness until the day before her death, a period of 43 days, with the exception that for a short period she was given juices. During this time the daughter's temperature was abnormally high, and for the greater part thereof ranged from 101° to 105°. At the time of her death she weighed 34 pounds, whereas the normal weight of such a girl would have been 54 pounds. Her condition was described as "skin and bones". During her illness the defendant claimed that his daughter was suffering from a heart condition, and after her death he persisted in this contention even though the autopsy on her body indicated no heart defect. On the other hand, in the early stages of his daughter's illness the defendant told a co-worker that she was suffering from rheumatic fever complicated by pneumonia, which supports the conclusion that he had knowledge of the illness which eventually was the immediate cause of his daughter's death. Subsequent to defendant's initial consultation with a medical doctor, a co-worker suggested, on several occasions, that he should seek the advice of a medical doctor but he refused to follow these suggestions. Instead, he told this co-worker that he might lose his daughter but that he was used to tragedy and that this, i.e., the fasting he had imposed upon his daughter, was the only way. Prior to the time his daughter became ill the defendant had expressed the wish to fast his daughter for 30 days. On one occasion defendant told a co-worker that his mother had told him he was starving his child to death. After her

death he expressed the hope that he might have another child because the next time he would prove he was right. The evidence justifies the conclusion that the defendant was using his daughter as a subject of an experiment to prove his belief that fasting was a cure for any illness even though he knew that his doing so might result in her death.

Presently acceptable definitions of criminal negligence are found in *People* v. *Penny*, 44 Cal. 2d 861, 879, *People* v. *Villalobos, supra*, 208 Cal. App. 2d 321, 326-328, and *People* v. *Rodriguez, supra*, 186 Cal. App. 2d 433, 440. Applying these definitions to the situation at hand, we conclude that the evidence as stated supports the conclusion of the trial court implied in its finding of guilt that, in imposing the fast upon his daughter under the circumstances related, the defendant was criminally negligent.

Defendant was a member of the American Natural Hygiene Society. He claimed that in imposing the fast upon his daughter he acted upon the advice of a hygienic practitioner in San Antonio, Texas, with whom he consulted via telephone; that he acted in good faith; and his conduct in the premises was not culpable. The trial court was not required to accept either his testimony in this regard or his conclusions based thereon.

There is no merit to the contention that defendant did not act willfully within the meaning of the law prescribing willfulness as an element of the offense with which he was charged. The conclusion of the trial court that the defendant was guilty of involuntary manslaughter as defined in § 192 of the Penal Code, is supported by the finding implied therein that the defendant's conduct, although lawful, was such as "might produce death in an unlawful manner, or without due caution and circumspection." As noted, the necessary element of criminal negligence which is a part of this offense is adequately supported by the evidence. Furthermore, the conclusion of the trial court also is supported by the further implied

finding that the defendant's conduct constituted an unlawful act within the meaning of § 192 of the Penal Code, viz, a violation of § 273a of the Penal Code,[1] and that adequate proof of both willfulness and criminal intent or criminal negligence as elements of that offense was supplied by the evidence.

The defendant's contention that the court erred in admitting incriminating statements made by him in the course of two interviews by a deputy sheriff, occurring respectively on April 1, 1963 and April 3, 1963, is based upon the premise that these interviews occurred during the accusatory stage of the proceedings, as defined in *People* v. *Dorado, supra,* 62 Cal. 2d 338. Preliminary to these interviews the defendant was not advised of his right to counsel and to remain silent, although prior to the second interview he had retained counsel and was advised by the latter to cooperate with the police. Approximately six months elapsed between these interviews and the return of the indictment charging defendant with manslaughter. The exclusionary rule did not apply because the statements were made during the investigatory rather than the accusatory stage of the proceedings; the defendant was not in custody at the time; and, under the circumstances of this case, the process of investigation conducted by the deputy sheriff was not such as to lend itself to eliciting incriminating statements. (*People* v. *Stewart,* 62 Cal. 2d 571; *People* v. *Davis,* 235 A.C.A. 248, 260; *People* v. *Garrett,* 235 A.C.A. 155, 159; *People* v. *Luckman,* 235 A.C.A. 89, 92; *People* v. *Katz,* 234 A.C.A. 480, 488-490; *People* v. *Miller,* 233 A.C.A. 385, 387.) Defendant relies upon the fact that the interviews were tape-recorded as proof that they were a process of interrogation lending itself to eliciting incriminating statements. However, this fact, of itself, does not dictate such a conclusion; is a cir-

[1] Although a violation of § 273a of the Penal Code now is a felony, at the time of the events under consideration, it was a misdemeanor.

cumstance to be considered along with other circumstances; and in the instant case constituted no more than the adaptation of modern recording methods to general investigation procedures. Furthermore, the statements made by the defendant did not constitute confessions and, after a review of the entire case including the evidence, we have concluded that it is not probable that a different result would have occurred if the statements had not been admitted. Under these circumstances, any alleged error in their admission would not justify a reversal. (*People* v. *Dorado, supra,* 62 Cal. 2d 338; *People* v. *Robinson,* 62 A.C. 942, 949; *People* v. *Hillery,* 62 A.C. 726, 745-746.)

The judgment is affirmed.